

## REMARKS

The claims remaining in the present application are Claims 1-20. The Examiner is thanked for performing a thorough search. Claims 1, 5, 8, 11, 13, 14 and 19 have been amended. No new matter has been added. For example, support for the amendments to the independent Claims 1 and 8 can be found in Claim 3. The other claims were amended to correct antecedent basis problems or to clarify the language of the claims.

## DOUBLE PATENTING REJECTION

### Claims 1, 2 and 14-16

Claims 1, 2 and 14-16 are rejected under the judicially created (non-statutory) doctrine of obviousness-type double patenting over claims 1-3 and 14-16 of Application No. 10/681,720 by Espinoza-Ibarra et al. A terminal disclaimer in compliance with 37 CFR 1.321 is being submitted concurrent with the instant response, thereby obviating the double patenting rejection.

## CLAIM REJECTIONS

### 35 U.S.C. §103

### Claims 1-20

Claims 1-20 are rejected under 35 U.S.C. §103(a) as being unpatentable over Applicants' Admitted Prior Art (AAPA) in view of U.S. Patent No. 6,952,782 by Staiger (referred to hereinafter as "Staiger"). Applicants respectfully submit that embodiments of the present invention are neither taught nor suggested by Applicants' admitted prior art or Staiger, alone or in combination.

Claim 1 has been amended to include the limitation previously recited by Claim 3. The Office Action asserts that background section of Applicants' instant application serial no. 10/681,721 teaches "An application server management system ... wherein said automatically modifying permits consumption of a greater portion of a rack power budget by rack equipment implementing a high priority application than rack equipment implementing a low priority application" (emphasis added) at page 2 lines 19-26. However, page 2 lines 19-26 of the instant application state,

In addition to operation characteristic differences, rack equipment is also often utilized to perform a variety of different applications. For example, some applications are associated with low priority tasks and/or do not require significant performance support. Other applications have a high priority

and/or require significant performance support. Managing and maintaining the infrastructure to support numerous possible applications in a large and complicated centralized networked resource environment for a variety of different clients raises many challenging operation issues.

Page 2 lines 19-26 of the instant application make no mention of “An application server management system ... wherein said automatically modifying permits consumption of a greater portion of a rack power budget by rack equipment implementing a high priority application than rack equipment implementing a low priority application.” The instant application’s background section goes on to state on page 3 lines 9-13, “The amount of power consumed and heat dissipated by any particular piece of rack equipment is traditionally constant regardless of whether the benefit of the set predetermined performance level outweighs the impact of the power consumed and/or heat dissipated.” Therefore, the instant application’s background section clearly indicates that the state of the art at the time of the instant application was filed did not teach “An application server management system ... wherein said automatically modifying permits consumption of a greater portion of a rack power budget by rack equipment implementing a high priority application than rack equipment implementing a low priority application” (emphasis added).

For the foregoing reasons, amended independent Claim 1 should be patentable. Amended independent Claim 8 should be patentable for similar reasons that Claim 1 should be patentable.

Amended independent Claim 14 recites, “an application determination module for determining an implementation of an application on rack equipment...a performance control module for controlling performance modulation in accordance with an application performance assignment guideline.” The Office Action failed to assert where any reference teaches “an implementation of an application on rack equipment is determined.” It appears to Applicants that the Office Action intended to assert that the instant application’s background section teaches “an application performance assignment guideline” at page 2 lines 19-26. However, referring to the quotation of page 2 lines 19-26 above, the instant application’s background section makes no mention of “an application performance assignment guideline.” For the foregoing reasons, independent Claim 14 should be patentable.

Claims 2-7 depend on Claim 1, Claims 9-13 depend on Claim 8 and Claims 15-20 depend on Claim 14. The dependent Claims include all of the limitations of their respective independent claims. Further, the dependent claims include additional limitations which further make them patentable. The following is a discussion of the additional limitations which further make various dependent claims patentable.

In a first example, the Office Action also asserts that the instant application's background section teaches Claim 5 which recites, "An application server management system ... wherein said application performance assignment guideline allocates a portion of a rack power budget for said particular application" at page 2 line 19- page 3 line 12. However, for reasons already discussed herein, it is clear that the instant application's background section does not teach "An application server management system ... wherein said application performance assignment guideline allocates a portion of a rack power budget for said particular application."

In a second example, the Office Action states, "As to claims 8-13, claims 1-7 basically are the corresponding elements that are carried out the method of operating steps in claims 8-13. Accordingly, claims 8-13 are rejected for the same reason as set forth in claims 1-7." However, many of the claims in the claim set 8-13 recite limitations that cannot be found anywhere in the claim set 1-7. For example Claim 12 recites, "An application performance allocation method... wherein said apportionment corresponds to an agreement between a client and a host."

Similarly, in several more examples, the Office Action fails to point out where any reference teaches or suggests "A computer usable storage medium of claim 14 further comprising an application event spawning module for generating application events," as recited by Claim 15, "A computer usable storage medium of claim 14 further comprising a telemetry monitoring module for monitoring characteristics and activity of said rack equipment associated with said application," as recited by Claim 16, "said performance allocation information indicates...thermal dissipation budget allocation," as recited by Claim 17 or "A computer usable storage medium of claim 14 wherein said application performance assignment guideline includes tradeoffs in the percentage of power consumption and thermal dissipation budget allocated to particular pieces of rack equipment in accordance with the business priority a client attaches to an application," as recited by Claim 19. Therefore, the dependent

claims should be patentable for at least the reasons that their respective independent claims should be patentable.

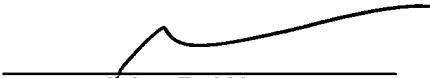
### CONCLUSION

In light of the above listed amendments and remarks, reconsideration of the rejected claims is requested. Based on the arguments and amendments presented above, it is respectfully submitted that Claims 1-20 overcome the rejections of record. For reasons discussed herein, Applicant respectfully requests that Claims 1-20 be considered by the Examiner. Therefore, allowance of Claims 1-20 is respectfully solicited.

Should the Examiner have a question regarding the instant amendment and response, the Applicant invites the Examiner to contact the Applicant's undersigned representative at the below listed telephone number.

Respectfully submitted,  
WAGNER, MURABITO & HAO LLP

Dated: 6/26/, 2006

  
\_\_\_\_\_  
John P. Wagner  
Reg. No. 35,398

Address: WAGNER, MURABITO & HAO LLP  
Two North Market Street  
Third Floor  
San Jose, California 95113

Telephone: (408) 938-9060 Voice  
(408) 938-9069 Facsimile